

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

MEMBERS OF THE BEEDE SITE	:	
GROUP	:	
	:	
v.	:	C.A. No. 1:10-cv-00439-WES
	:	
FRASER AUTOMOTIVE, INC.	:	

ORDER

Pending before me for a report and recommendation is Defendant's Motion to Dismiss Plaintiffs' Complaint. (Document No. 31). This case relates to the Beede Waste Oil Superfund Site located in Plaistow, New Hampshire and the Consent Decree entered in United States v. Methuen Lube, Inc., et al., Case No. 1:09-cv-00368-SM (D.N.H.), on December 23, 2009 (the "2009 Consent Decree"). Defendant is a party to the 2009 Consent Decree and has failed to make the settlement payment of \$214,642.00 required by the 2009 Consent Decree. Plaintiffs bring a number of statutory and common law claims against Defendant in this case arising out of Defendant's undisputed failure to honor its payment commitments in the 2009 Consent Decree.

Defendant argues in its Motion to Dismiss (1) that all of Plaintiffs' claims are barred by paragraph 17 of the 2009 Consent Decree; and (2) that Plaintiffs are not a party to the 2009 Consent Decree and thus have no standing to enforce its terms.¹ A hearing was held on March 9, 2011. Subsequently, the Court scheduled a second telephone hearing on March 21, 2011 and arranged the attendance of counsel for the United States Environmental Protection Agency ("EPA"). For the

¹ Defendant also argued that Plaintiff's claims were barred by the Consent Decree entered on July 22, 2008 in United States v. Exxon Mobil Corp., et al., Case No. 1:07-CV-00060-WES (D.N.H.), but abandoned that argument at the motion hearing.

reasons discussed during the telephone hearing, the EPA, through counsel, is ORDERED to submit a Memorandum to the Court in this case that addresses its position on the following legal issues arising out of the 2009 Consent Decree to which it is a party:

1. whether Defendant Fraser Automotive, Inc. f/k/a Fraser Pontiac-Buick-GMC, Inc. is entitled to the benefits of paragraph 17 of the 2009 Consent Decree even though it has, to date, failed to make its settlement payment as required by paragraph 5 of the 2009 Consent Decree?;
2. whether Plaintiffs, Members of the Beede Site Group, are intended beneficiaries of the settlement payments required under the terms of the 2009 Consent Decree?; and
3. whether Plaintiffs, Members of the Beede Site Group, have legal standing to bring an independent legal action for the purpose of interpreting or enforcing the terms of the 2009 Consent Decree to which they are not parties?

Counsel for the EPA shall file such Memorandum with the Court by April 15, 2011. The parties may file Supplemental Memoranda in response by April 29, 2011. The Clerk shall serve a copy of this ORDER on Patricia A. McKenna, Esquire, Senior Trial Attorney, U.S. Department of Justice, Environmental Enforcement Section, Washington, D.C. (Patricia.McKenna@usdoj.gov) and Cynthia A. Lewis, Esquire, Senior Enforcement Counsel, U.S. E.P.A., Region 1, Boston, MA (lewis.cindy@epa.gov).

SO ORDERED

/s/ Lincoln D. Almond
LINCOLN D. ALMOND
United States Magistrate Judge
March 22, 2011